89-1727

Supreme Court, U.S.
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DOCKET NO.

SUPREME COURT
OF THE UNITED STATES

OCTOBER TERM 1989

DEBORAH JEAN SAPIA,

Petitioner,

V.

CHARTER MARKETING COMPANY, GEORGE YOUNG, EARL KIGHT JR., CAPITOL CITY CREDIT COMPANY, JACK SMITH, CREDIT BUREAU SERVICES, FRANK MOZZICATO, HARTFORD HOSPITAL, RICHARD A. LAWSON, MARGE RAMSDELL, AND JOHN S. GUTMAN,

Respondents,

and

CONNECTICUT NATIONAL BANK, JOHN F. STOCKINGER, AND OSWALD ANTHONY SHERWOOD,

Respondents,

On Petition For Writ of Certiorari To The United States Court of Appeals For the Second Circuit

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BRIEF OF CREDIT BUREAU SERVICES IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Charles F. Corcoran, III, Esq.
Counsel for Respondents
Credit Bureau Services
Corcoran Mallin & Aresco, P.C.
One Commercial Plaza
Hartford, CT 06103-3599
Tel. (203) 520-5100

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QUESTION PRESENTED

I. Whether the United States Court of Appeals for the Second Circuit decided this case in a way that was in conflict with the decision of another United States Court of Appeals or the United States Supreme Court.

II. Whether the United States Court of Appeals for the Second Circuit departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by the District Court.

III. Whether the United States Court of Appeals for the Second Circuit decided an important question of federal law which has not been settled by the United States Supreme Court.

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PRELIMINARY STATEMENT

Petitioner has filed a Petition for writ of certiorari, seeking review of two decisions issued by the United States Court of Appeals for the Second Circuit in Case Nos. 89-7658 and 89-7850 on December 18, 1989 and February 7, 1990, respectively. This brief in response to the Petition for Writ of Certiorari is respectfully submitted on behalf of respondent Credit Bureau Services. The brief addresses the Petition for Writ of Certiorari only insofar as it relates to Case No. 89-7658, as that is the only case in which the respondent Credit Bureau Services was a party. This brief is submitted primarily to fulfill respondent's duty under Supreme Court Rule 15 to point out inaccuracies in the Petition.

STATEMENT OF THE CASE

Petitioner Deborah Jean Sapia commenced this action in December, 1987. Her complaint, as amended, filled more than seventy pages and set out 302 counts against 26 defendants, including petitioner's former employers, credit reporting companies, officials of the Connecticut Department of Labor, petitioner's former lawyers and her uncle. Petitioner alleged a series of events running roughly from 1970 to August, 1985 upon which she relies in her various causes of action. [J.A. 1-3].

Petitioner's factual and legal averments are so lengthy as to defy encapsulation. In essence, however,

petitioner alleged that the defendants had combined in a conspiracy to exclude her from the job market.

As to respondent Credit Bureau Services ("Credit Bureau"), petitioner made the following specific legal claims:

1. Count 99. Conspiracy in restraint of trade in violation of 15 U.S.C. §1.

2. Count 100. Conspiracy to monopolize in an attempt to exclude petitioner from the job market in violation of 15 U.S.C. §2.

3. Count 101. Violations of the Fair Credit Reporting Act, 15 U.S.C. §§1681e, 1681g, 1681i, 16811, 1681n and 1681o.

4. Count 102. Conspiracy to defame.

5. Count 103. Libel.

6. Count 104. Negligence.

7. Count 105. Intentional interference with contractual relations.

8. Count 105. False representations to petitioner.

9. Count 107. Fraudulent concealment. [J.A. 61-68].

On September 16, 1989, respondent Credit Bureau filed a Motion to Dismiss petitioner's claims against it pursuant to Rule 12 of the Federal Rules of Civil Procedure. The District Court, Dorsey, J., granted the Motion to Dismiss on March 8, 1989 as to each of the nine counts asserted against Credit Bureau. [J.A. 61-68]. In that same ruling, petitioner's claims against a number of other defendants also were dismissed.

[J.A. 68-105]. Counts 99 and 100 were dismissed for failure to state a claim upon which relief can be granted. Counts 101-107 were dismissed for failure to state a claim upon which relief can be granted and failure to comply with the applicable statute of limitations. With regard to Count 101, Judge Dorsey granted leave to petitioner to file an amended complaint within fifteen days of his ruling to correct the defects in that count. [J.A. 64]. No such amendment was filed.

On June 1, 1989, the District Court entered a Judgment of Dismissal in favor of Credit Bureau. On June 29, 1989 petitioner filed a Notice of Appeal. After briefing by the parties, oral argument on petitioner's appeal was held

before the United States Court of Appeals for the Second Circuit and on December 18, 1989 that court affirmed the judgment of the District Court. [J.A. 106-111].1

ARGUMENT

I. The United States Court of Appeals for the Second Circuit did not Decide This Case in a Way That was in Conflict with A Decision of Another United States Circuit Court of Appeals or This Court.

The Second Circuit's decision in this case is not in conflict with any decision of any other federal court. In

1 Credit Bureau Services is a tradename of TRW Inc. which is traded on the New York Stock Exchange and has no parent. In its Dec. 31, 1989 10K, it listed the following non-wholly owned subsidiaries: TRW do Brasil, S.A. and TRW Sabeit S.p.A. That 10K did not list subsidiaries which, considered in the aggregate, would not constitute a "significant subsidiary" as such term is defined in federal securities regulations.

her Petition, petitioner makes no effort to demonstrate that the decision of the Second Circuit in this case is inconsistent with the decisions of other circuit courts of appeals or this Court. Petitioner cites only one case, U.S. v. Grinnell Corp., 384 U.S. 563, 86 S. Ct. 1698, 16 L. Ed.2d 778 (1966). That case does not contradict, and was in fact cited in, the decision of the Second Circuit. Indeed, upon review it is evident that petitioner merely has taken a few words from the U.S. v. Grinnell Corp. decision and applied them out of context.

Petitioner's general, unsupported statements on the topics of due process and equal protection do not constitute a conflict between federal courts.

II. The United States Court of Appeals for the Second Circuit did not Depart from the Accepted and Usual Course of Judicial Proceedings, or Sanction such a Departure by the District Court.

On pages 11-12 of her Petition, petitioner alleges a variety of supposed procedural improprieties on the part of the District Court, including delays, allowing late filings and permitting non-compliance with a motion to compel production. Regardless of whether these claims are true, petitioner has failed to cite any authority in support of her position that the District Court abused its discretion, let alone "so far departed from the accepted and usual course of judicial proceedings... as to call for an exercise of this Court's

power of supervision." Sup. Ct. R. 10.1.(a).

Additionally, petitioner claims that her rights were abridged by the Court's refusal to appoint a second pro bono lawyer to represent her after her first such attorney was permitted to withdraw. Motions for appointment of pro bono counsel in civil actions, however, are a matter committed to "the sound discretion of the trial court" and "are granted only in exceptional circumstances...." U.S. v. McQuade, 647 F.2d 938 (9th Cir. 1981), cert. denied, 102 S. Ct. 1470, 455 U.S. 958, 71 L. Ed. 2d 677 (1982). Petitioner has proffered no authority to support the proposition that the District Court abused its discretion, or that her case

presented "exceptional circumstances". Rather, petitioner supports her claim with an incorrect statement of the procedural history of this case. Petitioner claims that Judge Dorsey granted her motion for appointment of a second pro bono lawyer on February 13, 1989 and "Then, for no reason, he reversed his order on May 1, 1989". [Petition p.12]. This statement is not true. Judge Dorsey vacated his February 13, 1989 motion on February 22, 1989 on grounds of deficiencies in petitioner's motion. Following petitioner's submission of information required by the Court as a condition for reconsideration of her motion, the Court denied that motion, stating:

"5/1/89: Denied. Prior appointed counsel was permitted to withdraw after plaintiff failed to utilize his services properly. Since that time, plaintiff has pressed an inordinate number of ill-founded claims, many of them long-barred by statute of limitations [sic]. Her conduct makes any further appointment an exercise in futility. SO ORDERED."

Thus, contrary to petitioner's claims, the decision to deny petitioner's motion for appointment of pro bono counsel was made on the basis of Judge Dorsey's knowledge of and involvement in this case. Absent some authority to demonstrate that his

actions constituted an abuse of discretion, that decision cannot support the granting of a petition for writ of certiorari.

III. The United States Court of Appeals for the Second Circuit Has Not Decided an Important Question of Federal Law Which Has Not Been Settled by the United States Supreme Court.

In her Petition, petitioner fails to assert that any issue of federal law not settled by this Court was decided by the Second Circuit. A review of the five questions outlined in that Petition makes clear that none of them provides grounds for a writ of certiorari.

A. Petitioner's first "substantive" question [Petition, p.1]

is whether or not there is a constitutional right to redress for being "blacklisted." Petitioner answers this question herself on page 10 of her Petition, where she correctly notes that there is no federal right of action for "blacklisting." Instead, petitioner asserted a variety of causes of action which, she claims, together constitute "blacklisting." [Petition, p. 10]. Nine of those causes of action asserted against Credit Bureau were dismissed by the District Court for failure to state a claim, or failure to comply with the applicable statute of limitations. As her action was neither timely filed nor properly plead, any question of petitioner's constitutional right to

bring such an action is moot.

B. Petitioner's second "substantive" question concerns her efforts to avoid the statutes of limitations barring her claims. Six counts of her Complaint directed against Credit Bureau that were dismissed in part on statute of limitations grounds alleged common law claims under Connecticut law. Accordingly, no federal question exists as to them. As to petitioner's three federal claims, two were not dismissed on statute of limitations grounds. The third was dismissed both for failure to comply with the statute of limitations and failure to state a claim. As petitioner has not questioned this second ground,

any error in the District Court's decision on the statute of limitations is harmless.

C. In her third "substantive" question, petitioner asserts that denial of pro bono counsel deprived her of her rights to due process and equal protection of laws. It is well settled that there is no constitutional right to court-appointed pro bono counsel in a civil case. Caruth v. Pinkney, 683 F. 2d 1044 (7th Cir. 1982), cert. denied, 459 U.S. 1214, 103 S. Ct. 1212, 74 L.Ed.2d 451 (1983).

D. Petitioner's two "procedural" questions simply take issue with particular actions of the District Court. Absent some authority to suggest

that the District Court acted improperly, these cannot be claimed to amount to important questions of federal law.

CONCLUSION

Nowhere in her Petition has petitioner raised sufficient grounds for this Court to grant her Petition for Writ of Certiorari. There is no claim that the decision of the United States Court of Appeals for the Second Circuit conflicted with a decision of another Court of Appeals or this Court; there has been no showing of procedural impropriety; and no important issues of federal law have been raised. Instead, petitioner has asserted only vague notions of what she perceives

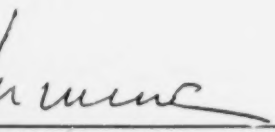
to be her constitutional rights - recitations unsupported by case authority.

Petitioner's claims against Credit Bureau were dismissed because they stated no actionable claims and were barred by the applicable statutes of limitations. Petitioner has made no effort to meet the standards ennunciated by this Court for granting writs of certiorari. Sup. Ct. R. 10.

For these reasons, Respondent Credit Bureau Services respectfully submits that the Petition for Writ of Certiorari should be denied.

Respectfully Submitted,

RESPONDENT CREDIT BUREAU SERVICES

BY 

CHARLES F. CORCORAN, III, ESQ.
Corcoran, Mallin & Aresco, P.C.
One Commercial Plaza
Hartford, CT 06103-3599
Tel. (203) 520-5100